

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

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Tariff Commission Notices

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Facilities Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

(T.D. 74-117)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles in categories 9/10 manufactured or produced in Thailand

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 3, 1974.

There is published below the directive of March 25, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles in categories 9/10 manufactured or produced in Thailand. This directive amends but does not cancel that Committee's directive of March 27, 1973 (T.D. 73-101).

This directive was published in the Federal Register on March 28, 1974 (39 FR 11458), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 25, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On March 27, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning April 1, 1973 of cotton textiles and cotton textile products in certain specified categories produced or man-

ufactured in Thailand in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹

Pursuant to paragraph 5 of the Bilateral Cotton Textile Agreement of March 16, 1972 between the Governments of the United States and Thailand, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed, effective as soon as possible, to increase the level of restraint established for cotton textile products in Category 9/10 to 2,009,800 square yards² for the twelve-month period which began on April 1, 1973.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton textiles and cotton textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
*Chairman, Committee for the Implementation
of Textile Agreements, and
Deputy Assistant Secretary
for Resources and Trade Assistance*

(T.D. 74-118)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 1, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying

¹The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of March 16, 1972 between the Governments of the United States and Thailand which provide, in part, that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

²This level has not been adjusted to reflect any entries made on or after April 1, 1973.

rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:

March 18, 1974-----	\$0.1970
March 19, 1974-----	.1970
March 20, 1974-----	.1975
March 21, 1974-----	.1975
March 22, 1974-----	.1975

Iran rial:

For the period March 18 through March 22, 1974, rate of \$0.0149.

Philippine peso:

For the period March 18 through March 22, 1974, rate of \$0.1495.

Singapore dollar:

March 18, 1974-----	\$0.4085
March 19, 1974-----	.4040
March 20, 1974-----	.4060
March 21, 1974-----	.4075
March 22, 1974-----	.4075

Thailand baht (tical)

For the period March 18 through March 22, 1974, rate of \$0.0495.

(LIQ-8-0-A :E)

R. N. MARRA,
*Director, Appraisement
and Collections Division.*

(T.D. 74-119)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in El Salvador

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1974.

There is published below the directive of March 22, 1974, received by the Commissioner of Customs from the Chairman, Committee for the

Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and cotton textile products in certain categories manufactured or produced in El Salvador.

This directive was published in the Federal Register on March 29, 1974 (39 FR 11622), by the Committee.

(QUO-2-1-0)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 22, 1974.

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner:

Pursuant to the Bilateral Cotton Textile Agreement of April 19, 1972, as amended, between the Governments of the United States and El Salvador and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective as soon as possible, and for the twelve-month period beginning April 1, 1974, and extending through March 31, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1/2/3/4, 9, 15 and 31, produced or manufactured in El Salvador, in excess of the following levels of restraint:

<i>Category</i>	<i>Twelve-Month Levels of Restraint</i>
1/2/3/4	388,043 pounds
9	1,575,000 square yards
15	1,050,000 square yards
31	1,058,620 numbers

In carrying out this directive, entries of cotton textiles and cotton textile products in Categories 1/2/3/4, 9, 15 and 31, produced or manufactured in El Salvador, which have been exported to the United States from El Salvador prior to April 1, 1974, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods for the twelve-month period beginning April 1, 1973 and extending through March 31, 1974.

In the event that the levels of restraint for that twelve-month period

have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of April 19, 1972, as amended, between the Governments of the United States and El Salvador which provide, in part, that within the aggregate limit, the limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of El Salvador and with respect to imports of cotton textiles and cotton textile products from El Salvador have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
*Chairman, Committee for the Implementation
of Textile Agreements, and
Deputy Assistant Secretary for
Resources and Trade Assistance*

(T.D. 74-120)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in Thailand

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1974.

There is published below the directive of March 25, 1974, received by the Commissioner of Customs from the Chairman, Committee for the

Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and cotton textile products in certain categories manufactured or produced in Thailand.

This directive was published in the Federal Register on March 29, 1974 (39 FR 11622), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 25, 1974.

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Pursuant to the Bilateral Cotton Textile Agreement of March 16, 1972, between the Governments of the United States and Thailand, and in accordance with Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective April 1, 1974 and for the twelve-month period extending through March 31, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 9/10, 15/16, 18/19, 22/23, 26/27, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 60, 62, 63, and 64, produced or manufactured in Thailand in excess of the following levels of restraint:

<i>Category</i>	<i>Twelve-Month Levels of Restraint</i>
9/10	2,067,188 square yards
15/16	826,875 square yards
18/19	2,067,188 square yards
22/23	1,240,313 square yards
26/27	1,653,750 square yards (of which not more than 1,102,500 square yards shall be in duck fabric ¹)
43	52,920 dozen

¹ The T.S.U.S.A. Nos. for duck fabric are:
 320.—01 through 04, 06, 08 326.—01 through 04, 06, 08
 321.—01 through 04, 06, 08 327.—01 through 04, 06, 08
 322.—01 through 04, 06, 08 328.—01 through 04, 06, 08

<i>Category</i>	<i>Twelve-Month Levels of Restraint</i>
45	22,050 dozen
46	19,845 dozen
47	17,420 dozen
48	9,923 dozen
49	15,435 dozen
50	27,563 dozen
51	27,563 dozen
52	29,768 dozen
53	8,489 dozen
54	15,435 dozen
55	7,497 dozen
60	41,895 dozen
62	83,886 pounds
63	83,886 pounds
64	89,878 pounds

In carrying out this directive, entries of cotton textiles and cotton textile products in the above categories, produced or manufactured in Thailand, which have been exported to the United States from Thailand prior to April 1, 1974, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods for the twelve-month period beginning April 1, 1973 and extending through March 31, 1974.

In the event that the levels of restraint for that twelve-month period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of March 16, 1972, between the Governments of the United States and Thailand which provide, in part, that within the aggregate limit, the limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton textiles and cotton textile products from Thailand have been determined by the Implementation of Textile Agreements to involve foreign affairs functions of the United States.

Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER
*Chairman, Committee for the Implementation
of Textile Agreements, and
Deputy Assistant Secretary for
Resources and Trade Assistance*

(T.D. 74-121)

Wool and manmade fiber textiles—Restriction on entry

Restriction on entry of wool and manmade fiber textile products in certain categories manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1974.

There is published below the directive of March 25, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of wool, and manmade fiber textile products in certain categories, manufactured or produced in the Republic of Korea. This directive further amends but does not cancel that Committee's directive of September 28, 1973 (T.D. 73-292).

This directive was published in the Federal Register on March 29, 1974 (39 FR 11621), by the Committee.

(QUO-2-1)

R. N. MARRA,
*Director,
Duty Assessment Division.*

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 25, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On September 28, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning October 1, 1973 of wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹ The directive of September 28, 1973 was previously amended by directives of October 24, 1973 and February 6, 1974.

Pursuant to paragraph 4(a) of the Bilateral Wool and Man-Made Fiber Textile Agreement of January 4, 1972, as amended, between the Governments of the United States and the Republic of Korea, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed further to amend, effective as soon as possible, the levels of restraint established in the aforesaid directive of September, 1973, for wool textile products in Categories 104 and 120 and for man-made fiber textile products in Categories 214-240 as a group, and individual Categories 216, 222 (part), 228 and 238 to the following:

Category	Amended Twelve-Month Levels of Restraint ²
104	1,612,217 square yards
120	336,311 numbers
214-240	350,478,143 square yards equivalent
216	142,755 dozen
Part 222 (excluding T.S.U.S.A. Nos. 380.0428 and 380.8165)	766,720 dozen
228	734,502 dozen
238	182,831 dozen

¹ The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreements of January 4, 1972, as amended, between the Governments of the United States and the Republic of Korea which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5%; for the limited carryover of shortfalls in certain categories to the next agreement year; for limited interfiber flexibility between cotton textiles and man-made fiber textile products of the comparable category; and for administrative arrangements.

² These amended levels of restraint have not been adjusted to reflect any entries made on or after October 1, 1973.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
*Chairman, Committee for the Implementation
of Textile Agreements, and
Deputy Assistant Secretary for
Resources and Trade Assistance*

(T.D. 74-122)

Country of origin marking

Marking of imported rotary metal cutting tools for country of origin purposes

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1974

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 134—COUNTRY OF ORIGIN MARKING

Pursuant to section 304(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and section 134.42 of the Customs Regulations (19 CFR 134.42), relating to the marking of imported merchandise as to its country of origin, notice is hereby given that imported rotary metal cutting tools must be marked by means of die stamping in a contrasting color, by raised lettering, by engraving, or by some other method of producing a legible, conspicuous, and permanent mark to clearly indicate the country of origin to the ultimate purchaser in the United States. The rotary metal cutting tools in question are those classified under items 649.43, 649.44, and 649.46 of the Tariff Schedules of the United States.

Imported rotary metal cutting tools marked by means of ink stamping, tagging with adhesive labels, or any other impermanent form of marking which permits the mark to be smudged, blurred, or otherwise easily obliterated or removed are not considered to be

acceptably marked as to country of origin for purposes of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), and Part 134 of the Customs Regulations (19 CFR Part 134).

However, pursuant to section 134.32(d) of the Customs Regulations, imported rotary metal cutting tools may be excepted from individual marking to indicate the country of origin if they reach the ultimate purchasers in the United States in individual tubes or containers which are legibly, conspicuously, and permanently marked to indicate the country of origin of the tools contained therein.

Effective date. The above ruling shall be effective as to merchandise entered, or withdrawn from warehouse, for consumption on or after the ninety-first day after publication in the Federal Register.

(ADM-9-08)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register April 15, 1974 (39 FR 13538)]

(T.D. 74-123)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 3, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 74-40 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:

March 25, 1974-----	\$0.0527
March 26, 1974-----	.0529
March 27, 1974-----	.0527
March 28, 1974-----	.0530
March 29, 1974-----	.0532

Belgium franc:

March 25, 1974-----	\$0.025510
March 26, 1974-----	.025480
March 27, 1974-----	.025295
March 28, 1974-----	.025675
March 29, 1974-----	.025550

Denmark krone:

March 28, 1974-----	0.1645
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Germany deutsche mark:

March 25, 1974-----	0.3943
March 26, 1974-----	.3932
March 27, 1974-----	.3898
March 28, 1974-----	.3972
March 29, 1974-----	.3948

Netherlands guilder:

March 25, 1974-----	0.3730
March 26, 1974-----	.3714
March 27, 1974-----	.3678
March 28, 1974-----	.3725
March 29, 1974-----	.3720

Norway krone:

March 28, 1974-----	0.1821
March 29, 1974-----	.1845

Portugal escudo:

March 29, 1974-----	0.0405
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Sweden krona:

March 25, 1974-----	0.2258
March 26, 1974-----	.2253
March 28, 1974-----	.2276
March 29, 1974-----	.2260

Switzerland franc:

March 25, 1974-----	0.3341
March 26, 1974-----	.3328
March 27, 1974-----	.3307
March 28, 1974-----	.3350
March 29, 1974-----	.3316

(LIQ-3-O:D:T)

R. N. MARRA,

Director,

Duty Assessment Division.

[Published in the Federal Register April 15, 1974 (39 FR 13564)]

(T.D. 74-124)

Foreign currencies—Quarterly list of rates of exchange

Lists of buying rates in U.S. dollars certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for use during the quarter shown

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1974.

The appended table lists the buying rates in U.S. dollars for certain foreign currencies first certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for a day in the quarter shown. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Sub-part C).

(LIQ-3-O:D:T)

J. D. COLEMAN,
Acting Director
Duty Assessment Division.

List of values of foreign currencies certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under provisions of section 522(c), Tariff Act of 1930, as amended.

QUARTER BEGINNING APRIL 1 THROUGH JUNE 30, 1974

Country	Name of currency	U.S. dollars
Australia	Dollar	\$1.4850
Austria	Schilling	.0530
Belgium	Franc	.025450
Canada	Dollar	1.0285
Denmark	Krone	.1642
Finland	Markka	.2700
France	Franc	.2089
Germany	Deutsche Mark	.3930
India	Rupee	.1280
Ireland	Pound	2.3960
Italy	Lira	.001596
Japan	Yen	.003570
Malaysia	Dollar	.4175
Mexico	Peso	.0800
Netherlands	Guilder	.3708
New Zealand	Dollar	1.4600
Norway	Krone	.1810
Portugal	Escudo	.0403
South Africa	Rand	1.4900
Spain	Peseta	.016960
Sri Lanka	Rupee	.1505
Sweden	Krona	.2255
Switzerland	Franc	.3287
United Kingdom	Pound	2.3960

(T.D. 74-125)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:

For the period March 25 through March 29, 1974, rate of \$0.1975.

Iran rial:

For the period March 25 through March 29, 1974, rate of \$0.0149.

Philippine peso:

For the period March 25 through March 29, 1974, rate of \$0.1495.

Singapore dollar:

March 25, 1974.....	\$0. 4080
March 26, 1974.....	. 4105
March 27, 1974.....	. 4085
March 28, 1974.....	. 4095
March 29, 1974.....	. 4140

Thailand baht (tical)

For the period March 25 through March 29, 1974, rate of \$0.0495.

(LIQ-3-O :A :E)

J. D. COLEMAN,
Acting Director
Duty Assessment Division.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Nils A. Boe

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Edward D. Re

Senior Judges

Charles D. Lawrence
David J. Wilson
Mary D. Alger
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4507)

GENERAL INSTRUMENT CORPORATION *v.* UNITED STATES

HORIZONTAL OUTPUT TRANSFORMERS (FLYBACK)—ASSEMBLED ARTICLES—AMERICAN COMPONENTS

American made products consisting of kraft paper, mylar, tape, sleeving, magnet wire, and lead wire were exported from the United States to Portugal where they were assembled along with

other components into horizontal output transformers, termed "flybacks," which were imported into the United States. United States customs officials disallowed the duty exemption provided for in TSUS item 807.00 as to the said American components.

Evidence adduced at the trial and post-trial concessions made by the government support the claimed item 807.00 treatment sought by the importer in this action as to the said American components.

Held, the duty on horizontal output transformers (flybacks) in accordance with TSUS item 807.00 must be assessed upon the full value of the imported transformers less the cost or value of the six (6) American made components in issue. *General Instrument Corporation v. United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973) followed.

Court No. 70/56833

Port of New York

[Judgment for plaintiff.]

(Decided March 28, 1973)

Lincoln & Stewart (*Eugene L. Stewart* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of horizontal output transformers, termed "flybacks" and used in color television receivers, which were exported from Portugal in 1969 and classified in liquidation upon entry at the port of New York under TSUS item 685.20 as parts of television apparatus at the duty rate of 8 per centum ad valorem. The plaintiff-importer alleges in its complaint that the regional commissioner of customs improperly disallowed duty allowances provided for in TSUS item 807.00 as to certain American products incorporated into the imported transformers in Portugal. The items in dispute are kraft paper, mylar, tape, sleeving, magnet wire, and lead wire.

In a footnote to its brief filed after trial of the issues raised by the pleadings, defendant, through its counsel, at p. 3 stated, among other things:

Defendant is limiting its argument herein to the various wires in dispute. As far as defendant can discern, the remaining articles in dispute, to wit, kraft paper, mylar, tape, and sleeving, are entitled to the same treatment accorded to the anode foil, cathode foil, paper, tabs, mylar, and tape in *General Instrument Corporation v. United States*, 60 CCPA [178], C.A.D. 1106, [480] F. 2d [1402], 7 Cust. Bull. No. 31, p. 47 (1973).

And in the conclusion set forth in the brief defendant's counsel at p. 8 states:

. . . Defendant concedes plaintiff's entitlement to item 807.00 treatment for the kraft paper, mylar, tape, and sleeving components of the imported articles.

In accordance with defendant's concessions the court finds that plaintiff is entitled to the duty allowance provided for in item 807.00 as to the kraft paper, mylar, tape, and sleeving incorporated into the imported transformers.

The question remaining for disposition here is whether the magnet and lead wire are also entitled to item 807.00 treatment.

The evidence in the record indicates that the disputed wire is manufactured in the United States to plaintiff's specifications for use in making coils and lead wire, and is mounted upon spools and exported by plaintiff to Portugal in that condition. In Portugal spools of magnet wire, in the same condition as exported, are despoled and machine wound around kraft paper "dummy" spools with each layer of winding being interleaved with a mylar film strip to form primary or high voltage coils. Still other spools of such magnet wire are machine wound directly onto cardboard coil forms to form convergence coils. [At some point these coil forms are also inserted into the cavity of the primary coils.] When the windings are completed the magnet wire is cut, thus separating the coils from the spooled wire. In the case of the primary coils, various taps are made at winding intervals from which leads emerge [for the purpose of carrying varying amounts of voltages to low voltage circuits in the television receiver in which the transformer is installed].

Also in Portugal lead wires [presumably drawn from spooled lead wire which is cut to length and stripped of insulating material at the ends] are soldered to the convergence coils after the winding has been completed, cut and taped. And in a final stage other lead wire is despoled, machine cut to length and stripped of insulating material at the ends, looped around the convergence coils and positioned to them by means of lead wire "sleeving" that has been treated in a chemical solution which causes the sleeving to expand and then contract around the looped wire when it dries.

The coil assemblies, which comprise the basic components of the transformer, are subjected to other processes such as baking to remove moisture and wax impregnation under vacuum. They are then ready for final assembly along with other components to form the finished transformers imported in this case. The uncontested testimony of Joseph Soares, manager of plaintiff's component materials and approval group, is that the wire involved in the making of these coils

was specially fabricated in the United States for use in coils, and when subjected to various tests, was found not to have lost any electrical, chemical, physical, and mechanical properties.

Plaintiff argues that the wire in issue complies with the requirements of item 807.00 so as to be entitled to the duty allowance provided for in that statute, citing the case of *General Instrument Corporation v. United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973). Defendant argues that between the time the subject wire was received abroad and the completion of the assembly process in the foreign country the wire underwent such a transformation in form, shape, character, and function as to be disqualified for item 807.00 treatment, citing the case of *E. Dillingham, Inc. v. United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972).

TSUS item 807.00 provides for the payment of duty upon the full value of the imported article, less the cost or value of products of the United States, as to :

Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

In C.A.D. 1106 the imported merchandise was aluminum electrolytic capacitors assembled in Taiwan, as to which the importer sought item 807.00 treatment for foil, tape, paper, tabs, and mylar produced in the United States and exported to Taiwan in rolls and incorporated into the making of the capacitors abroad. The steps taken in Taiwan involving the disputed materials which were utilized to produce a capacitor roll, involved (1) cutting the anode foil to a specified length from the roll as exported, (2) cutting an anode tab to length from a roll of material, (3) staking the anode tab to the cut anode foil at right angles thereto, (4) interleaving paper and cathode foil from rolls with the anode foil strip and winding them into a roll with the paper between the cathode and anode foils, (5) staking a previously cut cathode tab to the cathode foil at right angles thereto, (6) placing a length of plastic film under the anode tab, (7) adding two or three turns to the rolled-up assembly and then cutting the interleaved paper and cathode foil from the rolls, (8) securing the rolled-up paper and foil assembly against unwinding by applying cellophane tape from a dispenser, (9) immersing the rolled-up assembly in a liquid electrolyte solution, (10) removing the capacitor roll from the electrolyte and welding the cathode lead to the inside of the can, (11) attaching the anode tab to

the inside of a previously made rivet and washer assembly, and (12) inserting the rolled-up assembly into the can thus finishing the capacitor.

In sustaining the importer's claim for item 807.00 treatment of the disputed articles in C.A.D. 1106 which had been rejected in that case by the regional commissioner of customs and the Customs Court, the Court of Customs and Patent Appeals adopted a construction of the concept "assembly" which included sub-assembly operations involving the disputed articles. In this connection, the appeals court said:

. . . The only reasonable interpretation of item 807.00 is that all elements that go into the imported final article which meet the conditions the item imposes on the fabricated components are subject to the exclusion it provides.

We find that all the articles in issue here meet those requirements. Concededly all are products of the United States and all went into the imported electrolytic capacitors. The meaning of "fabricated" is broad and without doubt applies to the rolls of foil, paper, cellophane tape and plastic insulating film which obviously were manufactured articles. The articles did not lose [sic] their physical identity in the capacitor "by change in form, shape or otherwise." . . .

* * * * *

Since the only changes in the exported articles were "by being assembled" or "by operations incidental to the assembly," the items have not been "advanced in value" as prohibited by provision (c) of item 807.00

And finally, on the matter of whether the disputed items were subjected to further fabrication abroad, our appeals court in C.A.D. 1106 had this to say:

There remains the matter of whether the items were exported "in condition ready for assembly without further fabrication." . . . The paper in the present case, and the cathode foil in one form of capacitor, were cut to length after being at least partly assembled into the capacitor roll and thus met the provision in question Although the anode foil, the cathode foil in some cases, the metal tabs and the mylar film were cut to length before assembly with the other articles, we find no reason for considering them subject to any different treatment than the articles cut after assembly. Trimming of the edges of the anode foil amounts to an operation incidental to the assembly process and not to "further fabrication" under item 807.00. . . .

In *E. Dillingham, Inc. v. United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972), cited by the defendant, the imported merchandise was papermakers' felts exported from Canada, as to which the importer sought item 807.00 treatment for the fiber and the fabric of which the felts were composed and which were of American origin.

In sustaining the Customs Court's rejection of the importer's claim for item 807.00 treatment as to the fiber component, the Court of Customs and Patent Appeals held that the fiber component had been subjected to further fabrication abroad. Our appeals court said:

We believe that the correct starting point for the application of item 807.00 must be the components as "exported," in the condition in which they leave the United States. The word "components" appears in the introductory clause of item 807.00 and thus a uniform treatment of the word should exist for clauses (a), (b), and (c) thereof. Clause (a) speaks of the components which "were exported" and (c) speaks of improvement "abroad" thus indicating that the condition of a "component" is considered as of its departure from the United States.

In C.A.D. 1078 the fibers were exported from the United States in the bulk, baled form, *en masse*. And as to this state or condition of the fibers, the appeals court said:

Considering item 807.00 clause (a), we must determine whether operations performed on the exported component between its arrival abroad and the assembly, show that the component, as exported, was not "in condition ready for assembly without further fabrication." As we said in *United States v. Baylis Bros. Co.*, 59 CCPA 9, 451 F. 2d 643, C.A.D. 1026 (1971), "the term [assembly] is used to describe the joining or coming together of solids" Id. at [11], 451 F. 2d at 643. Accordingly, it is not until the fiber came together with the other component, the fabric, that assembly occurred. The operations performed upon the fiber component before it met up with the fabric include, at least, the opening, oiling, and carding performed upon the fiber component in Canada. . . .

And as to these interim operations, the court said:

We find the opening, oiling, and carding operations together constitute "further fabrication" of the fiber within clause (a) of item 807.00. Without the performance of these operations, the fiber component was not ready for assembly.

The decision of the Court of Customs and Patent Appeals in C.A.D. 1078 makes clear that the critical period in determining whether work performed abroad on exported articles (for which item 807.00 treatment is sought) amounts to an "assembly" operation or a "further fabrication" is the period between the arrival of the merchandise abroad and its meeting up with other components in the foreign country.

In the instant case the record shows that the magnet wire in dispute met up immediately and right off of the spool with the kraft paper and mylar [in the case of the primary and high voltage coils] and with the coil form [in the case of the convergence coil] in the winding operation in Portugal. As such, the coil winding operation, including sever-

ance of the wire from the spool, must be deemed to be an "assembly" operation within the purview of even C.A.D. 1078 inasmuch as there were no operations performed on the magnet wire which preceded the winding operation. Moreover, a winding operation *per se* is within the concept of "assembly" as that term is used in item 807.00. See: *General Instrument Corporation v. United States, supra*. Thus, the operations performed on the completed coils which utilized the magnet wire, i.e., baking and wax impregnation, must be viewed as being operations which are incidental to an *assembly* operation, consistent with the holding of our appeals court in C.A.D. 1106 on similar facts. Therefore, while there has been a transformation of the disputed magnet wire in its movement from the state of rolled wire as exported to the state of being an integral ingredient of a completed coil, this transformation does not entail changes which fall in a category other than *assembly* or *incidental to assembly* under C.A.D. 1106.

In the case of the lead wire there has, of course, been no such transformation connected with its handling as characterized the handling of the magnet wire abroad. But unlike the magnet wire, there were interim operations performed on the lead wire in Portugal. The evidence shows that *cutting to length* and *stripping of ends* preceded attachment of lead wire drawn from the spool to the convergence coil and to the high voltage coil and plate cap assemblies. However, these interim operations do not amount to a *further fabrication or advancement in value* of the lead wire. Cutting and stripping of lead wire are operations comparable to cutting and trimming operations performed on disputed items in C.A.D. 1106. It follows that the disputed lead wire must be considered as being ready for assembly in the condition as exported except for operations *incidental to assembly*, i.e., cutting and stripping.

No issue arises in the case under subdivision (b) of item 807.00 relative to loss of *physical identity* of the disputed wire. And inasmuch as the foregoing disposes of issues in the case arising under subdivisions (a) and (c) of item 807.00 with respect to the wire, the court concludes that plaintiff is entitled to the duty allowance provided for under item 807.00 as to the wire as well as to the merchandise on which concessions have been made.

In view of the evidence of record, and the defendant's concessions, the court finds that the kraft paper, mylar, tape, sleeving, magnet wire, and lead wire in the imported transformers

1. were fabricated components, the product of the United States at the time of their exportation to Portugal;
2. were exported in condition ready for assembly into the imported transformers without further fabrication;

3. did not lose their physical identity in such transformers by change in form, shape, or otherwise; and

4. were not advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process.

The allegations of the complaint herein are sustained, and judgment will be entered herein accordingly.

(C.D. 4508)

BORDER BROKERAGE CO., INC. v. UNITED STATES

On Plaintiff's Motion for an Order That a Timely Summons Be Deemed Filed for Certain Entries

Court No. 73-10-02969

Port of Seattle

[Motion denied.]

(Dated March 29, 1974)

Glad, Tuttle & White (John McDougall of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (Andrew P. Vance, trial attorney), for the defendant.

MALETZ, Judge: In this case plaintiff seeks an order from the court (1) that a timely summons be deemed filed with respect to six entries covered by protest no. 30043-000013; and (2) that these entries be deemed included in the present civil action which was commenced to contest denial of the foregoing protest.

The background is this. On January 30, 1973, plaintiff filed a timely protest (no. 30043-000013) covering 18 entries that were made during the latter part of 1972. The protest was denied on May 3, 1973. On October 29, 1973, plaintiff filed a summons in this court contesting the denial of the protest. However, the summons covered only seven of the entries involved in the protest, while the remaining six entries involved in the protest were not included in the summons. According to plaintiff, the failure to include these entries in the summons was due to inadvertence and clerical error. Such clerical error, plaintiff urges, should be excused, and a timely summons be deemed filed by incorporating therein the six entries previously omitted.

Relevant to the present controversy is 28 U.S.C. § 2631(a)(1) which provides in part that an action over which this court has jurisdiction is barred unless commenced within 180 days after the date of mailing of

notice of denial, in whole or in part, of a protest.¹ Also relevant is 28 U.S.C. § 2632(a) which provides that such an action to contest denial of a protest "shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court."

As previously mentioned, the protest in this case was denied on May 3, 1973 and the summons, which covered seven of the entries contained in the protest, was filed on October 29, 1973—one day before the expiration of the 180-day period within which plaintiff was entitled to commence a civil action to contest denial of the protest. The pending motion, on the other hand, was filed on November 19, 1973—200 days following denial of the protest. In this circumstance, defendant argues that since the present motion was filed after the expiration of the 180-day limitation period, the court lacks jurisdiction to take cognizance of the six entries that were not originally scheduled in the summons. Plaintiff contends to the contrary that the filing of a protest creates a "unitary cause of action" which embraces all entries included therein. Thus, in plaintiff's view, the mere identification of the protest number on the face of the summons serves, without more, to bring all protested entries within the scope of the resulting civil action commenced to contest denial of the protest. For the reasons that follow, I hold that the present motion is time-barred and that the court therefore lacks jurisdiction to take cognizance of the six entries that were not originally included in the summons.

At the outset, it is to be observed that under the Customs Courts Act of 1970, 84 Stat. 274, a protest *per se* is not a cause of action at all. Instead, by virtue of 28 U.S.C. § 2632(a), the denial of a protest, in whole or in part, creates a right of action. Moreover, the grouping of entries within a single protest is a matter of convenience to the importer. Indeed, Congress could have required a separate protest to be filed with regard to the liquidation of each separate entry, but chose not to do so. Thus, the protest is merely an administrative vehicle in which, as indicated below, multiple yet distinct claims may be embodied.

Pertinent on this latter aspect is *E. S. Novelty Co. v. United States*, 68 Cust. Ct. 374, C.R.D. 72-10, 343 F. Supp. 1364 (1972) in which a civil action was filed to contest the denial of five protests. Defendant moved to dismiss the entire action on the ground that a jurisdictional prerequisite had not been satisfied in that plaintiff had failed to pay the increased duty on the single entry covered by one of the protests. The court denied defendant's motion to dismiss the entire action but instead severed and dismissed only the protest which was jurisdiction-

¹ All references here and hereafter to the United States Code (U.S.C.) are to the 1970 edition.

ally defective. In referring to 28 U.S.C. § 1582(c),² the court made the following comments that are particularly in point here (68 Cust. Ct. at 375, 343 F. Supp. at 1365) :

* * * *I detect in this statute behind all procedures and forms, an underlying intent to allow the tariff treatment of each entry of merchandise or even each category of merchandise to give rise to a distinct legal claim.* It happens that considerations of convenience and economy permit the combination of legal claims at various levels, such as the existence of numerous categories of merchandise (found in one entry) in one protest [footnote omitted] or the joining of numerous entries in one protest [footnote omitted] or the joining of numerous protests in one civil action [footnote omitted.] Nevertheless, the tariff treatment of the single entry on the single category of merchandise remains for me the most fundamental and indivisible circumstances [sic] which can give rise to legal claims. [Emphasis added.]³

Additionally, the court in *E. S. Novelty* stated (68 Cust. Ct. at 376, 343 F. Supp. at 1366) :

* * * *The * * * privilege of joining entries (insofar as they are embodied in protests) * * * was not intended to submerge their identities and combine them into an indivisible and homogeneous entity which must thereafter be treated as a single unit.* The correct parallel is between the joinder of claims relating to individual entries * * * and the joinder of claims in other courts.
* * * [Emphasis added.]

In *Novelty Imports, Inc. v. United States*, 68 Cust. Ct. 362, C.R.D. 72-7, 341 F. Supp. 1228 (1972), *aff'd sub nom. United States v. Novelty Imports, Inc.*, 60 CCPA 131, C.A.D. 1096, 476 F. 2d 1385 (1973) the defendant moved to quash a summons and dismiss an entire civil action comprised of several protests covering a number of entries on the ground that liquidated duties had not been paid in regard to two entries covered by one of the protests included in the civil action. The court denied defendant's motion to dismiss the entire civil action but rather dismissed the action with regard to these two entries only. Bearing repetition is the following statement by the court (68 Cust. Ct. at 366, 341 F. Supp. at 1231-2) :

Under prior statutes it has been held that each invoice and entry is to be deemed and treated as a separate transaction for the appraisement of merchandise and the assessment of duties. * * *

* * * * *

² 28 U.S.C. § 1582(c) provides in part that "The Customs Court shall not have jurisdiction of an action unless (1) * * * a protest has been filed * * * and denied * * *."

³ These comments were specifically quoted with approval by the appellate court in *United States v. Novelty Imports, Inc.*, 60 CCPA 131, —, C.A.D. 1096, 476 F.2d 1385, 1387 (1973).

No different result is required by 28 U.S.C. 1582(c) and section 514 of the Tariff Act of 1930, as amended, which are drawn in the language of one protest, one entry, and one action * * *.

In light of the foregoing, it is manifest that in order for an importer to contest judicially the liquidation of an entry of imported merchandise, not only must he initially file a protest with regard to that entry (see 19 U.S.C. § 1514) (regardless of whether he chooses to file one protest to cover multiple entries or to file one protest for each separate entry), but, additionally, following denial of the protest on the administrative level, he must commence a civil action with respect to such entry by the filing of a timely summons within 180 days after denial of the protest as to that entry. See 28 U.S.C. § 2631(a). Moreover, it is self-evident that a protest need not be denied *in toto*. Thus, in a situation in which a protest is administratively allowed as to one entry, but denied as to another, the importer has no right of action in this court with regard to the former entry. Then, too, an importer may decide for his own reasons not to pursue judicially a claim as to merchandise on a particular entry, even though he may have sought a reliquidation administratively. Clearly, therefore, a summons may be limited in content to fewer entries than were covered by the administrative protest, denial of which is being challenged.

In sum, each entry is a separate transaction and an administrative decision is made with regard to each such transaction. What is more, 28 U.S.C. § 1582(a) grants the Customs Court exclusive jurisdiction of civil actions instituted by the person whose protest has been denied, in whole or in part, "where the *administrative decision* * * * involves * * * (5) the liquidation or reliquidation of *an entry* * * *." [Emphasis added.] Added to that, 28 U.S.C. § 2631(a), as discussed before, provides that:

An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days * * * [Emphasis added.]

Thus, any claim with regard to the liquidation of the six entries sought by plaintiff to be added to the present summons, is time-barred by statute, notwithstanding that administrative relief was sought as to those entries by way of protest.

Also worthy of note is rule 3.4(a)(3) of this court which provides:

(a) * * * A summons in a civil action commenced to contest the denial of a protest * * * shall set forth:

* * * * *

(3) with respect to *each entry* of merchandise involved in a denied protest *included* in the civil action, the port of entry, the entry number, and the date of entry * * *. [Emphasis added.]

Obviously, were the court to accept plaintiff's contention that the mere identification of the protest number on the face of the summons serves to include in the resulting civil action all matters within the scope of the protest, there would be no necessity for this rule. Further, considering that 28 U.S.C. § 2632(a) provides in part that "[a] civil action shall be commenced by filing a summons in the form, manner, and style and *with the content prescribed in rules adopted by the court*" [emphasis added], it necessarily follows that plaintiff is required to file a summons as to each entry, within 180 days after denial of the protest covering each such entry. Failure in this regard defeats plaintiff's cause of action with respect thereto.

Withal, plaintiff insists that the decision in *Pharmacia Laboratories, Inc. v. United States*, 67 Cust. Ct. 609, C.R.D. 71-5 (1971) should govern here. In that case the issue was whether a summons was jurisdictionally defective for failure to *allege* that all liquidated duties have been paid when in *fact* the duties had been paid. Defendant argued that whether or not all duties had been paid, the failure to aver this jurisdictional fact in the summons rendered it invalid and the action should be dismissed. Plaintiff argued it was the fact and not the allegation which determined jurisdiction. The court allowed plaintiff to amend its summons to include the jurisdictional averment that all duties had been paid before the filing of the summons. In reaching this conclusion, the court stated (67 Cust. Ct. at 610) :

By statute (28 U.S.C. § 1582, as amended) the fact that all liquidated duties, charges or exactions have been paid at the time an action is filed in this court is a jurisdictional condition precedent to instituting such action. If payment of duties has not been made, the court lacks jurisdiction to entertain the action. From this requirement there can be no departure. But does it follow, as a necessary consequence, that the failure to state this fact, as distinguished from the failure to comply with this condition, constitutes a fatal jurisdictional defect?

The court then went on to point out (*Id.* at 612) :

* * * Even where essential jurisdictional *averments* are omitted from pleadings courts are empowered, if not also required, to make appropriate corrections. This is the intent and purpose of 28 U.S.C. § 1653 which provides as follows:

"Amendment of pleadings to show jurisdiction.

"Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."

* * * * *

Since, in other federal forums, jurisdictional allegations are embodied in complaints, and since the *failure to state jurisdictional facts is not a fatal omission*, but can be cured by amendment, it would seem that there is no justifiable argument for denying to plaintiffs in this court an opportunity to amend that document

in which the jurisdictional statement is required. [Emphasis added.]

From the foregoing, it is clear that there is a basic distinction between the situation in *Pharmacia* and the situation here. For in *Pharmacia* the court had jurisdiction of the subject matter since the duties had in fact been paid. The only difficulty was that plaintiff had neglected to state that fact in the summons and thus failed to comply with a procedural requirement. Here, on the other hand, the court has no jurisdiction whatever of the subject matter in view of the fact that adherence to the 180-day filing requirement is an absolute jurisdictional requirement. Thus, just as the court lacks jurisdiction to entertain an action if payment of duties has not been made (see *Pharmacia*, 67 Cust. Ct. at 610), so too the court lacks jurisdiction to entertain the present motion since it was not filed within the 180-day limitation period.

For the reasons stated above, the court hereby denies plaintiff's motion for an order that a timely summons be deemed filed for the six entries in question.

Decisions of the United States Customs Court

Custom Rules Decision

(C.R.D. 74-3)

THE FIRESTONE TIRE & RUBBER COMPANY *v.* UNITED STATES

ON DEFENDANT'S MOTION FOR REHEARING
AND PLAINTIFF'S CROSS-MOTION FOR
AMENDED SUMMARY JUDGMENT

Court Nos. 72-5-01060 and 72-9-01969

[Defendant's motion for rehearing
granted; plaintiff's cross-motion
for amended summary judgment denied.]

(Dated March 29, 1974)

Kirkland, Ellis & Rowe (James M. Johnstone and Robert D. Strahota of
counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Frank J. Desiderio*, trial
attorney), for the defendant.

NEWMAN, Judge: The Government has moved for an order vacating
the summary judgment entered herein for plaintiff on October 11,
1973 (C.D. 4474); and either entering a judgment for defendant, or
alternatively restoring this action to its prior status for amendment of
the pleadings and for determination of the value of certain processing
which occurred in Canada, as provided in item 806.30, of the Tariff
Schedules of the United States (TSUS).

Plaintiff has filed an opposition to defendant's motion and a cross-
motion for an amended summary judgment supported by an affidavit
and "summary sheet".

For the reasons stated, defendant's motion for rehearing is granted
(upon the terms specified hereinafter), and plaintiff's cross-motion for
an amended summary judgment is denied at this time.

The background of these proceedings follows:

So-called top and bottom domes for premix soda syrup containers were manufactured in the United States by a division of Firestone, and then shipped to Uniroyal, Ltd. in Montreal, Canada (Uniroyal). At Uniroyal, a shock-resistant quality was imparted to the domes by the application of a rubber coating. Thereafter, the domes were returned to Firestone in the United States for completion of manufacture.

Upon importation of the metal domes from Canada, plaintiff claimed that duty should be assessed upon only the value of the processing in Canada pursuant to item 806.30, TSUS.¹ That claim was rejected by the customs officials, and duty was assessed upon the full appraised value of the domes.

In these consolidated civil actions, plaintiff claimed that the domes were subjected to "further processing" outside the United States within the meaning of item 806.30; and under that provision the entries should have been liquidated upon only the value of the processing outside the United States, rather than upon the full appraised value of the imported articles.

Plaintiff moved for summary judgment, contending that there was no genuine issue as to any material fact. Defendant cross-moved for summary judgment in its favor, agreeing with plaintiff that there was no genuine issue as to any material fact. Significantly, no question concerning the cost or value of processing in Canada was raised by either party. Indeed, the only issue argued by the parties and considered by the court was whether the domes were further processed outside the United States within the purview of item 806.30.

This court granted plaintiff's motion (C.D. 4474), finding "that there is no genuine issue of fact to be tried in this case, and that as a matter of law the articles in issue were further processed outside the United States within the purview of item 806.30, TSUS, as claimed by plaintiff"; and additionally, ordered "that the district director reliquidate the entries covered by these civil actions, and in so doing assess the appropriate rate of duty *upon the value of the processing outside the United States*, in accordance with item 806.30, TSUS". [Emphasis added.]

¹ Item 806.30 reads as follows:

806.30 Any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing-----

A duty upon the value of such processing outside the United States * * *

In its present motion, defendant now asserts that the court has made no finding or determination of the value of the processing performed on plaintiff's domes in Canada; and that "nowhere in the complaint, memorandum in support of its motion for summary judgment, or accompanying affidavits, does plaintiff allege what it considers to be the value of said further processing". Citing my recent decision in *Mobilite v. United States*, 70 Cust. Ct. 359, C.R.D. 73-11, 358 F. Supp. 267 (1973), defendant now insists that without such allegation concerning value and proof in support thereof, plaintiff was not entitled to summary judgment, but rather that "only partial summary judgment for plaintiff is possible on these facts".

I agree.

In *Mobilite*, after deciding that certain lamps and bulbs were not dutiable as entireties, but as separate articles, this court held that under the Customs Courts Act of 1970, P.L. 91-271, it was incumbent upon the court to judicially determine the separate values of the articles in the same proceeding.² It was observed (70 Cust. Ct. at 365-366) :

One of the most significant changes made in the existing procedure by enactment of the pioneering Public Law 91-271 was abolishing the remand of protests by a division of three judges to a single judge for determining value, and giving jurisdiction to single judges to hear all issues arising out of any entry or liquidation. Thus, in the new law Congress intended that "[t]here will be a single judicial proceeding in which all issues, including both appraisement and classification, will be considered". H.R. Rep. No. 91-1067, 91st Cong., 2d Sess. 11 (1970); S. Rep. No. 91-576, 91st Cong., 1st Sess. 12 (1969). See also *A. N. Deringer, Inc. v. United States*, *supra*. Granting plaintiff's request to enter a final judgment referring this matter to the customs officials, with the issue of separate values judicially unresolved, would squarely defeat Congress' manifest intent. Hence, the determination of the separate values for the lamps and bulbs remains to be judicially resolved in this case; and of course, the burden of proof respecting such issue rests upon plaintiff.

Inasmuch as the complaint in *Mobilite* did not allege the separate values of the lamps and bulbs, it was held that issue had not been joined on the ancillary value aspect of the case. Accordingly, plaintiff's motion for summary judgment was denied, and leave was granted to file an amended complaint alleging the separate values of the lamps and bulbs. Defendant was granted time after service of an amended complaint in which to file an amended answer. Since the threshold issue of entireties had been determined, and only the ancillary value

² Plaintiff had urged that the court enter a judgment dismissing the action as premature, and referring the matter to the appropriate customs officials to make valid appraisements "in accord with the judicially determined separate tariff status of the import".

issue remained, partial summary judgment was entered for the plaintiff.³

Although *Mobilite* was an "entireties" case, I am clear that the rationale therein requiring a determination of classification and value issues in the same civil action is fully applicable to these civil actions involving item 806.30, TSUS.

Plaintiff here contends, however, that the aggregate value of the processing in Canada (\$101,137)⁴ is ascertainable from the official record; that the aggregate amount of additional customs duties assessed in liquidation was \$14,576.26, which additional duties were predicated solely upon the valuation by the Government of the processing in Canada; and that the "[c]ustoms authorities necessarily accepted the value of further processing as claimed by plaintiff in arriving at their determination of the full value of the entries". Plaintiff further argues that defendant "should be estopped from raising or contesting a valuation issue at this stage of the proceedings".

Defendant, on the other hand, urges that an examination of the entries reveals that the customs officials made no determination of the value of the processing in Canada; that the appraisements were made without regard to any invoiced charges for work performed, or the value of the goods exported to Canada; and that the appraisements reflect solely the value of the merchandise at the time of importation into the United States.

Thus, defendant disputes that the additional duties are attributable solely to the value of the processing in Canada, and emphasizes there has been no official finding by the customs authorities concerning the value of processing in Canada.

While the applicability of item 806.30 to the entries in this case was clearly established in the prior proceedings leading to the order in C.D. 4474, I have noted that plaintiff, unfortunately, did not allege in the complaint either its cost or the value of the processing in Canada, which are the criteria of value set forth in headnote 2(a), schedule 8, part 1, subpart B.⁵ Neither is there an allegation in the complaint that the Government predicated the assessment of additional duties solely

³ Subsequently, the value issue was disposed of by stipulation of the parties in open court. *Mobilite, Inc. v. United States*, 71 Cust. Ct. —, C.D. 4478 (1978).

⁴ These two consolidated civil actions cover fourteen entries.

⁵ Schedule 8, part 1, subpart B, headnote 2(a) reads:

2. Articles repaired, altered, processed, or otherwise changed in condition abroad.—
The following provisions apply only to items 806.20 and 806.30:

(a) The value of repairs, alterations, processing, or other change in condition outside the United States shall be—

(i) the cost to the importer of such change; or

(ii) if no charge is made, the value of such change,
as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 or 402a of this Act. *

upon the value of the processing in Canada, or that the customs officials accepted the value of further processing claimed by plaintiff. Under these circumstances, I am constrained to agree with defendant that, following the rationale in *Mobilite*, only partial summary judgment could properly be entered for plaintiff. Additionally, plaintiff's contention that defendant should be estopped from raising or contesting a valuation at this stage of the proceedings is without merit.

Since the pleadings have not been addressed to the cost or value of the processing, as noted above, I deem it premature at this juncture to consider plaintiff's cross-motion for an amended summary judgment. Therefore, the cross-motion will be denied, and the affidavit and "summary sheet" submitted by plaintiff in support thereof will not be considered at this time.

In accordance with the views stated herein, it is hereby adjudged and ordered:

1. Defendant's motion for rehearing is granted.
2. The summary judgment entered for plaintiff on October 11, 1973 in C.D. 4474 is vacated and set aside.
3. Predicated upon the undisputed facts set forth in C.D. 4474, I find and hold that the domes in issue were further processed outside the United States within the purview of item 806.30, TSUS, as claimed by plaintiff, and a partial interlocutory summary adjudication in plaintiff's favor is hereby made to that effect.
4. Plaintiff's cross-motion for an amended summary judgment is denied at this time.
5. Plaintiff may file an amended complaint alleging the cost or value of the processing in Canada, said amended complaint to be filed within fifteen (15) days after the service of this order. Defendant is granted fifteen (15) days after service of an amended complaint in which to file an amended answer.



Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

CUSTOMS COURT

DEPARTMENT OF THE TREASURY, April 1, 1974.

VERNON D. AGREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate			
F74/220	Watson, J. March 27, 1974	Robert Bosch Corp. et al.	67/35885, etc.	Item 685.90 17.6% or 15.5%	Item 683.00 8.5% or 7.5%	Item 683.00 8.5% or 7.5%	Robert Bosch Corp. v. U.S. (C.D. 3881)	San Francisco Solemold switches

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
							Par. or Item No. and Rate
P74/221	Richardson, J. March 29, 1974	National Silver Company	72-3-00615	Item 538.75 60% plus 10¢ per doz. per oz.; or 45% plus 8¢ per doz., per oz.	Item 533.71 45% or 30%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	New Bedford (Boston) Mugs of non-bone china, ware or of sub-porcelain
P74/222.	Watson, J. March 29, 1974	The American Import Co.	67/83200	Item 748.20 28%	Item 774.60 17%	Summary Judgment	Philadelphia Artificial flowers, etc.
P74/223	Watson, J. March 29, 1974	The American Import Co.	68/40700	Item 748.20 28%	Item 774.60 17%	Summary Judgment	Philadelphia Artificial flowers, etc.
P74/224	Watson, J. March 29, 1974	First American Natural Ferns Co., Inc.	67/25709, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 2778)	New York Artificial flowers, etc.
P74/225	Watson, J. March 29, 1974	Rice Bayardstorf Co.	67/70222, etc.	Item 748.20 28% (Items marked "A" and "B")	Item 774.60 17% (Items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 2778); Zun- old Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc. (Items marked "A" and "B")

CUSTOMS COURT

P74/228	Watson, J. March 29, 1974	R. I. Saunders & Co., Inc. etc.	65/17741, etc.	Par. 357 19%	Par. 353 19 1/4%	R. I. Saunders & Co., Inc. v. U.S. (C.D. 4887)
P74/227	Watson, J. March 29, 1974	Zee International, Inc.	72-6-01234	Item 355.82 15¢ per lb. plus 18%	Item 355.81 7¢	Agreed statement of facts
P74/226	Newman, J. March 29, 1974	Durst Industries, Inc.	66/50681, etc.	Item 657.35 1.27¢¢ per lb. plus 15% (items marked "A" and "D")	Item 654.00 10% (items marked "A") Liquidations void, entries in schedule A, attached to decision and judgment, remanded to regional com- missioner for administrative action not in- consistent with judgment (items marked "D")	The Westbrass Company v. U.S. (C.D. 4286) (items marked "A" and "D")

Los Angeles
PVC Nonstoping Sponge
Leather (woven or knit
fabrics of man made
fibers coated or filled
with rubber or plastic
material, or 70% by
weight of rubber or
plastic)

New York
Shower heads and sink or
shower fixtures (items
marked "A")

Combination
strainer, consisting of
a basket insert replace-
ment cup, as well as a
base (items marked
"D")

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/201	Re. J. March 27, 1974	Dant & Russell, Inc., et al.	R62/14610, etc.	Export value: Net ap- praised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/202	Re. J. March 27, 1974	Getz Bros. & Co., et al.	28804-A, etc.	Export value: Net ap- praised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/203	Re. J. March 27, 1974	Pan Asiatic Trading Co., Inc.	R58/4049, etc.	Export value: Net ap- praised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R74/204	Re J. March 27, 1974	Toyonaka, Inc., et al.	R50/2788, etc.	Export value: Not ap- praised value less 7½%, not packed	Not stated	U.S. v. Gets Bros & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/205	Re J. March 27, 1974	The Walled Lake Door Co., et al.	R61/18005, etc.	Export value: Not ap- praised value less 7½%, not packed	Not stated	U.S. v. Gets Bros & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/206	Re J. March 27, 1974	James G. Wiley, et al.	R58/2008, etc.	Export value: Not ap- praised value less 7½%, not packed	Not stated	U.S. v. Gets Bros & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/207	Richardson, J. March 29, 1974	Alfred C. Toepper, Inc., et al.	71-10-01519, etc.	Constructed value	Set forth in schedule at- tached to decision and judgment in column No. 5 headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the plead- ings	Chicago Radio chassis, radios, earphones, batteries, transistor radios, radios (Models RPA-10 and RPT- 30) and batteries imported with these models

**Appeals to United States Court of
Customs and Patent Appeals**

**APPEAL 74-25.—United States v. Wedemann & Godknecht, Inc., a/c
ATWATER THROWING CO., ET AL.—OFFGRADE PERLON FILAMENTS—
JURISDICTION.** Appeal from C.D. 4499.

The merchandise involved in these cases consists of offgrade perlon filaments. Defendant-appellant moved to dismiss certain protests because they were not filed by a proper party and argued that the court is without jurisdiction if the protests were not filed by any of the parties designated in section 514, Tariff Act of 1930. Said cases, including the 19 involved herein, were severed from those decided on the merits in plaintiff-appellees' favor in *Wedemann & Godknecht, Inc., a/c Burlington Industries, Inc., et al. v. United States*, 59 Cust. Ct. 475, C.D. 3199, 275 F. Supp. 1017 (1967). The severed cases were restored to the calendar for further testimony to be adduced relating to the question of the authority to file a protest. Thereafter, the court granted defendant's motion to dismiss. *Wedemann & Godknecht, Inc. v. United States*, 65 Cust. Ct. 177, C.D. 4075 (1970). Plaintiff thereupon filed a motion for rehearing which was granted. Additional evidence was adduced and the matter was submitted for decision on the sole issue of jurisdiction.

The record established the involved merchandise was sold by Farbenfabriken Bayer, A.G. of West Germany (FFB) to Atwater Throwing Co. and Liberty Fabrics of New York on a duty-paid delivered basis. Wedemann & Godknecht, Inc. (W & G), customhouse broker for FFB, was authorized to make all customs entries for clearance and delivery at New York. It was also authorized to employ customhouse brokers at ports other than New York for entry, clearance and delivery. Allen Forwarding Co. (Allen) was hired by W & G for the purpose of entering and clearing the involved merchandise at the port of Philadelphia, Pa. All papers were forwarded by W & G to Allen. Entries in the involved cases were made in the name of Allen, naming as the ultimate consignee either Atwater Throwing Co. or Liberty Fabrics of New York. However, no owner declaration or superseding bond was filed within the time prescribed by section 485(d), Tariff Act of 1930. The duties were paid by Allen for which it was reimbursed or payment was received in advance from W & G. These sums were in turn reimbursed by FFB. Upon liquidation of these entries, Allen notified W & G who in turn advised the attorneys, pursuant to agreement with FFB, to file protests. Protests were filed in the name of Wedemann & Godknecht, Inc. for the account of Atwater Throwing Co. or Liberty Fabrics of New York. Additionally, the testimony identified George H. McFadden, named on the Special Customs Invoice (C.F. 5515), as the sales agent in the United States for FFB.

The court concluded that for customs purposes Allen must be considered as the consignee and actual owner of the merchandise and, therefore, the principal in the transaction; that the acts of filing the involved protests by W & G were the acts of Allen; that the record established that Allen ratified the acts of W & G in filing the protests; that Liberty Fabrics and Atwater Throwing Co. were not for customs purposes parties who may file a protest since the record did not establish them to be actual importers; that Allen remained the sole owner entitled to file a protest under section 514, *supra*; that the intent of W & G was to carry out the orders of FFB to have protests filed to protect the right to obtain a refund; that the right to protest should not be curtailed on a technicality when the consignee and its principals were in agreement as to the filing of a protest and the consignee had ratified the act of W & G in filing the same; that on the merits someone was entitled to a refund and that someone, as far as customs was concerned, was Allen, the "person" paying the charge. Accordingly, the court held the protests were sufficient to grant it jurisdiction. As the merits of the involved cases were previously determined in C.D. 3199, *supra*, plaintiff's classification claim was sustained. *Wedemann & Godknecht, Inc. v. United States*, C.D. 4499 (January 30, 1974).

It is claimed that the Customs Court erred in finding that Allen was the agent of W & G; in not finding that Allen was an independent contractor; in finding that W & G was the principal of Allen; in finding that FFB was the principal of Allen; in finding that the acts of W & G were the acts of Allen; in finding that W & G acted as agent for, or on behalf of, Allen when it filed the involved protests; in finding that Allen could "ratify" the acts of W & G in filing the involved protests; in finding that FFB had a right to obtain any refund of excess duties herein; in finding that the requirements of section 514, *supra*, regarding a "right of action" against the United States for a refund of duties paid, are "technicalities"; in not finding that said requirements of section 514 were conditions precedent to any party's "right of action" against the United States; in not finding that said requirements of section 514 must be strictly construed against any party asserting a "right of action" against the United States; in finding that Allen is entitled to a refund of duties herein; in not finding that a proper party plaintiff does not have a right to a refund of duties unless it, or its duly authorized agent, has filed a protest within 60 days after the liquidation of the involved entry(s); in finding that a proper party plaintiff that has not filed a protest against the liquidation of the entry by the appropriate customs official, within 60 days of said liquidation, is entitled to a refund of duties; and in not finding that neither W & G nor FFB were the "importers" of the involved merchandise.

Appeal 74-26.—United States *v.* Douglas Aircraft Co.—VALUE OF
PROCESSING PERFORMED ABROAD ON AIRPLANE PARTS—COST OF
CANADIAN-MADE TOOLING. Appeal from C.D. 4498.

This case involves a portion of an airplane which was sent out of the United States for further processing in Canada and then imported. The district director at the port of Detroit found the net value of the processing subject to duty to be \$285,552, net packed, pursuant to item 806.30, Tariff Schedules of the United States, in conjunction with headnote 2 of Schedule 8, part 1, subpart B. Included within the \$285,552 assessed value of processing was the amount of \$49,972 as the pro-rata share of Canadian-made tooling furnished to the Canadian processor by the importer. Plaintiff-appellee claimed the cost of the processing of the imported merchandise. Defendant-appellant moved for judgment on the pleadings pursuant to rule 4.9 of the rules of the Customs Court asserting that, even if the allegations of plaintiff's complaint are accepted as true, defendant should prevail as a matter of law. Defendant bases its assertion on its view that the costs of tooling are, as a matter of law, properly included in the costs of processing under headnote 2, *supra*. Plaintiff cross-moved for summary judgment asserting that there are no issues of fact in this case and the cost of processing under the statute and case law does not include the cost of tooling. The court concluded that plaintiff's position was correct. Defendant's motion for judgment on the pleadings was denied; plaintiff's motion for summary judgment was granted. The proper value of the processing at issue was determined to be the appraised value less the sum of \$49,972.

It is claimed that the Customs Court erred in granting the importer's cross-motion for summary judgment and in finding and holding that the correct dutiable value of the processing performed abroad on certain airplane parts was equal to the appraised value less the sum of \$49,972; in denying the Government's motion for an order granting judgment on the pleadings and affirming the appraised value of the processing as determined by the district director; in finding and holding that the cost of Canadian-made tooling which was supplied to the Canadian processor is not a part of the dutiable value of the processing performed in Canada on the involved airplane parts; in finding and holding that the "cost to the importer" in schedule 8, part 1, subpart B, headnote 2(i), TSUS, is limited to the amount charged by the processor for the processing done abroad; and in not finding and holding that the cost of the Canadian-made tooling is properly part of the value of the processing as required under schedule 8, part 1, subpart B, headnote 2, TSUS.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, April 11, 1974.

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337-L-69]

CERTAIN GARAGE DOOR LOCKS

Notice of dismissal of preliminary inquiry

On April 3, 1974, the U.S. Tariff Commission (Commissioner Young dissenting; Vice Chairman Parker and Commissioner Leonard not participating) dismissed, without prejudice, preliminary inquiry No. 337-L-69, Certain Garage Door Locks. The preliminary inquiry was instituted on the basis of a complaint filed with the Commission on November 5, 1973, by National Lock Hardware, Rockford, Illinois, alleging unfair methods of competition and unfair acts in the importation and/or sale of certain garage door locks in the United States in violation of section 337 of the Tariff Act of 1930. Notice of the Commission's receipt of complaint and institution of the preliminary inquiry was published in the *Federal Register* on January 8, 1974 (39 F.R. 1406).

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 8, 1974.

[337-L-70]

ANTENNA ROTATOR SYSTEMS

Suspension of proceedings

Upon request of complainant and for other reasons, the U.S. Tariff Commission on March 29, 1974, suspended proceedings in its prelimi-

nary inquiry until September 30, 1974, in the above entitled preliminary inquiry instituted under the provisions of section 337 of the Tariff Act of 1930.

The preliminary inquiry was instituted on January 30, 1974, upon a complaint filed on behalf of The Alliance Manufacturing Company, Inc., Alliance, Ohio.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 1, 1974.

[337-L-72]

CERTAIN WHEEL BALANCING WEIGHTS

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt on March 7, 1974, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by Gottwald Industries, Inc., of Akron, Ohio, alleging unfair methods of competition and unfair acts in the importation and sale of certain wheel balancing weights which are embraced within the claims of U.S. Patent Nos. 3,177,039 and 3,273,941 licensed to the complainant. Miguel Guiterrez of Fundicion Mecanica S.A. de C.V., Ensenada, Baja California, Republic of Mexico, has been named as either importing or offering for sale the subject product in the United States. In addition, entry documents show that Per-Spec Industries, Inc., 1805 Potrero Street, El Monte, California, and Parnelli Jones Enterprises, 20555 Earl Street, Torance, California, are importers or consignees of shipments of this product.

In accordance with the provisions of section 203.3 of its Rules of Practice and Procedure (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the issues raised in the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than May 20, 1974. Extensions of

time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436. A signed original and nineteen (19) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 5, 1974.

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